

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

* * * * *

In The Matter of Charges and

Complaint Against

RANDALL FOSTER, M.D.,

Respondent.

Case No. **08-5334-1**

NO. _____
FILED December 1, 2008


CLERK OF THE BOARD

**COMPLAINT AND REQUEST FOR SUMMARY SUSPENSION OF
RESPONDENT'S ABILITY TO PRESCRIBE, ADMINISTER, OR DISPENSE
CONTROLLED SUBSTANCES**

The Investigative Committee of the Board of Medical Examiners of the State of Nevada, composed of Sohail U. Anujm, M.D., Chairman, S. Daniel McBride, M.D., Member, and Mr. Van V. Heffner, Member, by and through Edward O. Cousineau, General Counsel for the Nevada State Board of Medical Examiners, having a reasonable basis to believe that RANDALL FOSTER, M.D., has engaged in conduct that is grounds for discipline pursuant to the provisions of NRS Chapter 630, hereby alleges, charges and complains against said Dr. Foster as follows:

1. Dr. Foster was licensed in active status to practice medicine in the state of Nevada on September 9, 1978 by the Nevada State Board of Medical Examiners, pursuant to the provisions of Chapter 630 of the Nevada Revised Statutes, and at all times addressed herein was so licensed.

2. Dr. Foster operates a medical practice specializing in psychiatry.

3. Previous to the preparation of this Complaint, the Nevada State Board of Medical Examiners has solicited the services of an independent medical expert to review the medical records of multiple patients treated by Dr. Foster. The record review included four patients, Patient A, B, C, and D. Three of the patients, B, C, and D, will not be directly referred to herein,

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1 but whose identities, along with Patient A, are disclosed in a separate Patient Designation
2 incorporated by reference to this Complaint.

3 4. The expert's review of these patient's medical records concluded that although
4 Dr. Foster is a psychiatrist, his prescribing of controlled substances resulted in him assuming the
5 role of a pain specialist, as well as a primary care provider for these patients, and as such,
6 Dr. Foster had a professional obligation to document the basis for his medical decision making in
7 the same manner as would have been used by a provider of primary care and pain management
8 when prescribing controlled substances. The expert concluded that the reviewed medical records
9 lack evidence of sufficient physical examinations for the patients, consistent documentation of
10 vital signs being monitored throughout the patient's treatment course, or medical justification for
11 the continued prescribing of controlled substances, all of which are required under the
12 appropriate standard of care.

13 5. Of most import, the expert determined that Patient A was provided prescriptions
14 for opiates on a regular basis by Dr. Foster for nearly six years, and during that time Dr. Foster
15 documented only one limited physical exam, which the expert felt did not adequately assess the
16 Patient A's complaints of pain. Furthermore, Dr. Foster continued to prescribe significant
17 amounts of opiates for Patient A after Patient A wrote him a letter admitting she, Patient A, was
18 struggling with addiction to the prescribed medications and that she was taking the medications
19 only to avoid withdrawal symptoms. The expert further indicated that the issue of addiction
20 likely contributed to Patient A's overall dissatisfaction with her life, and as a result, may have
21 contributed to her committing suicide.

22 6. Dr. Foster's medical records relating to the aforementioned patients were also
23 reviewed by Lucien L. Bergeron, M.D., a medical reviewer for the Nevada State Board of
24 Medical Examiners. Dr. Bergeron's review concluded that Dr. Foster failed to perform adequate
25 physical examinations on all of the patients prior to prescribing controlled substances to them,
26 that the medical records lack any indication or justification for Dr. Foster's ongoing pain
27 management prescribing, and that Dr. Foster's prescribing of controlled substances was both
28 inconsistent with the expectations enunciated in the Model Guidelines for the Use of Controlled

Substances for the Treatment of Pain and with the expected medical standard of care as it relates to the prescribing of controlled substances. See Exhibit 1 - Affidavit of Lucien L. Bergeron, M.D.

7. NRS 0.031 defines Controlled Substances as a drug, immediate precursor or other substance which is listed in schedule I, II, III, IV or V for control by the State Board of Pharmacy pursuant to NRS 453.146 and NAC 453.510 to NAC 453.550.

8. As a standard of practice, the Nevada State Board of Medical Examiners has adopted the Model Guidelines for the Use of Controlled Substances for the Treatment of Pain under NAC 630.187. The guidelines require before a physician may prescribe controlled substances for a patient, he must perform an evaluation of the patient, take a complete medical history, perform a physical examination of the patient, formulate a treatment plan, conduct periodic reviews for adjustments and stated treatment objectives, and all must be fully documented in the patient's medical records.

COUNT I

9. All of the above paragraphs are incorporated by reference as though fully set forth herein.

10. Dr. Foster's prescribing of controlled substances for Patients A, B, C and D constitutes malpractice.

11. Malpractice is defined at NAC 630.040 as "the failure of a physician, in treating a patient, to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances."

12. By reason of the foregoing, Dr. Foster has violated NRS 630.301(4) and NAC 630.187, and is subject to discipline as provided by NRS 630.352.

COUNT II

13. All of the above paragraphs are incorporated by reference as though fully set forth herein.

14. Dr. Foster failed to maintain accurate and complete medical records relating to his prescribing of controlled substances for Patients A, B, C and D.

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15. NRS 630.3062(1) states that failure to maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care of a patient is grounds for discipline.

16. By reason of the foregoing, Dr. Foster has violated NRS 630.3062(1) and NAC 630.187, and is subject to discipline as provided by NRS 630.352.

COUNT III

17. All of the above paragraphs are incorporated by reference as though fully set forth herein.

18. NAC 630.230(1)(I) provides that a physician shall not engage in the practice of writing prescriptions for controlled substances to treat acute pain or chronic pain in a manner that deviates from the guidelines set forth in the Model Guidelines for the Use of Controlled Substances for the Treatment of Pain adopted by reference in NAC 630.187.

19. Dr. Foster's prescribing of controlled substances to Patients A, B, C and D without maintaining accurate records is not authorized by law.

20. NRS 630.306(3) provides that it is grounds for initiating disciplinary action if a licensee administers, dispenses, or prescribes any controlled substance to others except as authorized by law.

21. By reason of the foregoing, Dr. Foster has violated NRS 630.306(3), NAC 630.187, and NAC 630.230(1)(I), and is subject to discipline as provided by NRS 630.352.

WHEREFORE, the Investigative Committee of the Nevada State Board of Medical Examiners prays as follows:

1. That the Nevada State Board of Medical Examiners schedule an emergency meeting by telephone conference, and that the Board review the above Complaint, with exhibits, and any other evidence, argument or presentation, find that Dr. Foster poses a threat to the health and safety of patients he sees and treats, or may see and treat, as well as the public in general, and summarily suspend Dr. Foster's ability to prescribe, administer, or dispense controlled substances in Nevada pending a hearing on this Complaint, and,


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1 2. That the Nevada State Board of Medical Examiners conduct a hearing on the
2 Complaint herein as provided by statute, find and determine that Dr. Foster has violated one or more
3 provisions of the Medical Practice Act (NRS Chapter 630), enter findings of fact, conclusions of
4 law, and an order imposing sanctions upon Dr. Foster according to NRS 630.352; and

5 3. That the Nevada State Board of Medical Examiners take such other and further
6 action as may be just and proper in these premises.

7 DATED this 1st day of December, 2008.

8 INVESTIGATIVE COMMITTEE OF
9 THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

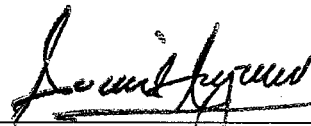
10 By: 
11 Edward O. Cousineau
12 Attorney for the Investigative Committee of
13 The Nevada State Board of Medical Examiners
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VERIFICATION

STATE OF NEVADA)
 : ss.
COUNTY OF CLARK)

SOHAIL U. ANJUM, M.D., having been duly sworn, hereby deposes and states under penalty of perjury that he is the Chairman of the Investigative Committee of the Nevada State Board of Medical Examiners that investigated the complaint against Dr. Foster herein; that he has read the foregoing Complaint; and that based upon the results of the Investigative Committee's investigation into a complaint against Dr. Foster, the allegations and charges in the foregoing Complaint against Dr. Foster are true, accurate and correct.

Dated this 1st day of December, 2008.



SOHAIL U. ANJUM, M.D.

EXHIBIT

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BEFORE THE BOARD OF MEDICAL EXAMINERS

OF THE STATE OF NEVADA

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Complaint Against)

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RANDALL FOSTER, M.D.,)

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Respondent.)

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AFFIDAVIT OF LUCIEN L. BERGERON

STATE OF NEVADA)

) ss.

COUNTY OF ELKO)

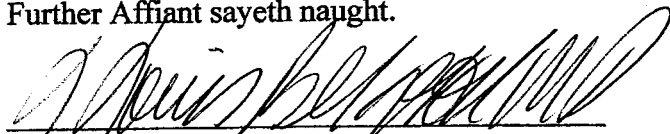
I, , being first duly sworn upon oath, hereby depose and state under penalty of perjury as follows:

1. I have been a licensed physician in the state of Nevada since December of 1989 and specialize
in Internal Medicine.
2. Currently, I am employed as a Medical Reviewer for the Nevada State Board of Medical
Examiners.
3. I make this Affidavit in support of the Complaint and Request for Summary Suspension of Dr.

Foster's ability to prescribe controlled substances being advanced by the Nevada State Board of Medical Examiners.

4. The statements herein are based upon my own personal knowledge except as otherwise expressly stated, or indicated by the context, to be upon information and belief.
5. Previous to the preparation of this Affidavit, I was requested to review the medical records of numerous patients who were prescribed controlled substances during their care and treatment by Dr. Foster.
6. My review determined that in every instance, Dr. Foster failed to perform adequate physical exams of the patients, and in some instances, Dr. Foster conducted no physical examination of the patients prior to prescribing controlled substances to them. Moreover, the medical records show no documentation that Dr. Foster monitored the patient's vital signs during their treatment course, nor do they include any indication or justification for his on-going pain management prescribing.
7. I believe that Dr. Foster's failure to perform adequate physical examinations of the patients and lack of documentation for the basis of his medical decision making regarding the continued prescribing of controlled substances is both inconsistent with the expectations enunciated in the Model Guidelines for the Use of Controlled Substances for the Treatment of Pain and with the expected medical standard of care as it relates to the prescribing of controlled substances.

Further Affiant sayeth naught.


State of Nevada County of Elko
Subscribed and sworn to before me

this 21st day of November, 2008.

